

<b>SST Found. v International Footnotes (HK) Ltd.</b>
2010 NY Slip Op 31186(U)
May 13, 2010
Supreme Court, New York County
Docket Number: 107811/08
Judge: Joan B. Lobis
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SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY

PRESENT: HON. JOAN B. LOBIS  
*Justice*

PART 6

SST FOUNDATION,

- v -

INTERNATIONAL FOOTNOTES (HK) LTD., FAMOUS  
FORTUNE INTERNATIONAL, LIMITED,  
and MIRACLE TRADING CO. LTD.,

INDEX NO. 107811/08

MOTION DATE 3/30/10

MOTION SEQ. NO. 005

MOTION CAL. NO.

The following papers, numbered 1 to 25 were read on this motion for other relief

Notice of Motion / Order to Show Cause - Affidavits - Exhibits \_\_\_\_\_  
Answering Affidavits - Exhibits \_\_\_\_\_  
Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED

1-17

18-25

Cross-Motion: [ ] Yes [X] No

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the accompanying memorandum decision.

**FILED**  
MAY 17 2010  
NEW YORK  
COUNTY CLERK'S OFFICE

Dated: 5/13/10

*JBL*  
JOAN B. LOBIS, J.S.C.

Check one: [X] FINAL DISPOSITION

[ ] NON-FINAL DISPOSITION

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY: IAS PART 6**

-----X  
SST FOUNDATION,

Petitioner,

Index No. 107811/08

- against -

INTERNATIONAL FOOTNOTES (HK) LTD.,  
FAMOUS FORTUNE INTERNATIONAL LIMITED,  
and MIRACLE TRADING CO. LTD.,

Respondents.

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JOAN B. LOBIS, J.S.C.:

**Decision, Order and Judgment**  
**FILED**  
MAY 17 2010  
NEW YORK  
COUNTY CLERK'S OFFICE

In Motion Sequence Number 005 petitioner moves, by order to show cause, for an order granting leave to petitioner to serve second restraining notices on two non-party garnishees, Adesso-Madden Inc. ("Adesso") and Wal-Mart Stores East, LP ("Wal-Mart East"), and for an order directing Adesso to pay petitioner the sum of \$64,734.15. In Motion Sequence Number 006, respondents International Footnotes (H.K.) Limited, Famous Fortune International Limited, and Miracle Trading Company Limited (collectively "International Footnotes") move for reargument of their previous motion (Motion Sequence Number 004) for an order vacating the default judgment that was entered against them and vacating an arbitration award. The motions are hereby consolidated for disposition.

In February 2009, this court confirmed an arbitration award, on default, rendered in favor of petitioner and against respondents. On or about March 23, 2009, petitioner served a restraining notice, an information subpoena, and an attorney's certification on Steven Madden, Ltd. ("Madden"), informing the company of the arbitration award and essentially directing it not to satisfy any debt due to respondents. On or about March 24, 2009, Alan M. Novich, Senior Vice President of Madden's Strategic Planning and Finance department, responded to the documents by letter to counsel for

petitioner. He informed counsel that “[w]e have neither accounts payable due anyone in this [restraining notice], nor do we have accounts receivable due us from anyone in this [restraining notice].” Mr. Novich then requested that all wholly owned business entities of Madden check their accounts.

On or about May 22, 2009, an information subpoena was filled out by Ronald Wood, a co-President of Adesso, a wholly owned subsidiary of Madden. Mr. Wood informed petitioner that Adesso did business with respondents from 2006 until March 2009 when respondents advised Adesso that International Footnotes was closing, and that Adesso could do business with a new company, Attractions Footwear, Inc. (“Attractions”). Mr. Wood further informed petitioner that, on March 31, 2009, \$39,994.80 due to International Footnotes was paid to Attractions. On April 19, 2009 \$8,557.05 due to International Footnotes and Attractions was paid to Attractions. As of May 2009, there were two other invoices due to respondents in the amounts of \$5,745.00 and \$18,994.35.

On or about June 8, 2009, petitioner served a restraining notice and information subpoena on Wal-Mart East, which was answered on or about August 18, 2009 by Amy Brady, Import Merchandise Manager of Wal-Mart Stores, Inc. Ms. Brady informed petitioners that Wal-Mart East did business with respondent International Footnotes until February 26, 2009, when it changed its name to Attractions. Ms. Brady further informed petitioners that it paid to International Footnotes a total of \$388,168.48 from January 1, 2009 to February 26, 2009. From February 27, 2009 through June 30, 2009, Wal-Mart East did \$9,506,827.40 in business with Attractions.

On or about June 22, 2009, respondents filed a notice of motion (Motion Sequence Number 004), returnable on July 20, 2009, seeking an order vacating this court’s February 2009

judgment. The motion was adjourned until August 27, 2009. On February 9, 2010, this court issued a decision, order, and judgment denying the motion, finding that respondents neither had a reasonable excuse for their default nor a meritorious defense to petitioner's motion to confirm the arbitration award. On or about March 8, 2010, respondents brought the motion to reargue, returnable on April 6, 2010. The motion was adjourned until April 29, 2010.

On or about March 18, 2010, petitioner brought the order to show cause on Motion Sequence Number 005. On March 30, 2010, after oral argument, Adesso agreed, by stipulation so ordered by the undersigned (the "Stipulation"), to pay petitioner \$24,739.35, which represents the amount of the two outstanding invoices due to respondents in May 2009. Adesso further agreed to pay \$39,994.80, which represents the amount paid to Attractions on March 31, 2009 approximately one week after Madden was restrained, into an escrow account pending the court's determination of the motion. Petitioner agreed to serve, and Adesso and Wal-Mart East agreed to accept, new restraining notices, because the previous restraining notices were set to expire.

Since the viability of Motion Sequence Number 005 depends on the court's decision in Motion Sequence Number 006, the latter motion will be decided first. The court notes that respondents have failed to attach copies of the original motion papers. Regardless of this defect, the motion is denied. A motion for reargument is "addressed to the sound discretion of the court and may be granted only upon a showing 'that the court overlooked or misapprehended the facts or the law or for some reason mistakenly arrived at its earlier decision.'" William P. Pahl Equip. Corp. v. Kassis, 182 A.D.2d 22, 27 (1st Dep't 1992) (internal citations omitted); see also C.P.L.R. Rule 2221(d). Respondents' current contentions were considered in Motion Sequence Number 004 and rejected. They have failed

to demonstrate that the court overlooked or misapprehended matters of relevant fact or law with respect to the claims against it and their motion is denied.

Motion Sequence Number 005 has been almost entirely resolved by the Stipulation. The issue of whether Adesso should release to petitioner the \$39,994.80 in escrow remains outstanding. "Parent and subsidiary or affiliated corporations are, as a rule, treated separately and independently . . . absent a demonstration that there was an exercise of complete dominion and control [by the parent]." Sheridan Broadcasting Corp. v. Small, 19 A.D.3d 331, 332 (1st Dep't 2005) (citation omitted). "[T]he existence of an agency upon which a finding of jurisdiction may be predicated may not be inferred from the mere existence of a parent-subsidiary relationship." Insurance Co. of North America v. EMCOR Group, Inc., 9 A.D.3d 319, 320 (1st Dep't 2004). Therefore, service on a parent corporation is not the equivalent of service on the subsidiary. See Donley v. Gateway 2000, Inc., 266 A.D.2d 184 (2d Dep't 1999). Petitioner offers no legal authority that would alter this principle. It, thus, cannot be said that Adesso, as a subsidiary of Madden, was served with the restraining notice on March 23, 2009, the day that Madden was served. Adesso and Madden are two separate entities, and petitioner has presented no evidence that Madden's "control over the subsidiary's activities . . . [is] so complete that the subsidiary is, in fact, merely a department of the parent." Delagi v. Volkswagenwerk A.G. of Wolfsburg, Germany, 29 N.Y.2d 426, 432 (1972) (citation omitted). Accordingly, that branch of petitioner's motion seeking a payment from Adesso of \$39,994.80, which Adesso voluntarily placed in escrow, is denied.

This constitutes the decision and order of the court.

Dated: May 13, 2010

**FILED**  
MAY 17 2010  
NEW YORK  
COUNTY CLERK'S OFFICE

  
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JOANE B. LOBIS, J.S.C.